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09/904,547	07/16/2001	John J. Waldmann	WALD 082C1	6008

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EXAMINER

LOVERING, RICHARD D

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 12/03/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,547

Applicant(s)

WALDMANN

mk-2

Examiner

LOVERING

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 10, 12 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Perman ^F5,071,587, esp. Examples 6 and 7, noting also the Abstract. While Perman doesn't specifically state that his tablets remove nitrate, this property would be inherent or implicit in the tablets of Perman, since applicant herein discloses and teaches that only two of his three ingredients are essential. Note that claim 3 herein doesn't require the presence of highly cross-linked carbohydrate polymer, and claims 4, 5, 7, 8, 12 and 13 herein don't require the presence of an organic modified clay. Claim 10 herein also recites a mere inherent or implicit property of claim 7.

3. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which applicant regards as the invention. λ

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 4, 5, 6 and 10 recite the broad recitation "modified with methyl-dihydrogenated tallow amine . . . (DTMA); "modified by hydrophobic alkylamines . . . or mixture of these"; "the group consisting of aluminum silicates . . . combinations thereof"; and "selected from . . . and combinations thereof" and the claims also recite "and most preferable . . . (DTMA)"; "and preferable C₄-C₁₈

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acid . . . or mixture of these"; "and most useful group . . .
formula $\text{Na}_2\text{O} \cdot \text{Al}_2\text{O}_3 \cdot 4\text{SiO}_2 \cdot 2\text{H}_2\text{O}$ "; and "most preferable is an anionic
polyelectrolyte" which is the narrower statement of the
range/limitation.

Claims 1-8 and 10-13 are indefinite and incomplete and fail to properly point out the invention in not reciting the range, in parts, of all the ingredients of the claimed compositions.

Claims 1-4, 6, 7 and 10-12 recite Markush groups which are not considered proper for the reasons that they are indefinite as to scope and incomplete as to their memberships in one or more of the following: a) recite "or" or "and/or" instead of --and-- between penultimate and last member; b) recite "or" instead of --,-- between the other member^s; and c) recite "comprising" instead of --consisting of--.

Claim 5 is indefinite and obscure in reciting "the use" (bridging lines 1 and 2), which expression should be cancelled.

Claim 6 is indefinite in lacking antecedent basis in claim 2 for "said earth adsorbent additives". (Claim 6 should be rendered dependent upon claim 1.)

Claim 8 is incomplete in lacking a period after "cellulose" in line 3.

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Claim 9 is indefinite, confusing and inconsistent in reciting non-zero parts for three ingredients, while at the same time apparently only requiring the presence of two ingredients.

Claim 10 is a substantial duplicate of claim 7 in reciting a mere inherent or implicit property of the composition of claim 7.

Claim 11 is indefinite and improper in reciting a method or process step in a composition claim.

not allowed ²⁵ Claim 12 is indefinite as to scope and incomplete in not reciting what Y in COOY stands for.

5. Claims 9 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the compositions of claims 9 and 11 herein.

7. The claims and specification are replete with errors in spelling and grammar, it is applicant's responsibility to correct said errors.

should be 8. Applicant should insert the status of the parent case (now U.S. Patent No. 6,261,459) on pages 1, 4-6, 8 and 10 of the specification.

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9. The remaining references listed on the attached Form PTO-892 are cumulative to the reference applied herein, and/or further show the state of the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc
November 26, 2002

RICHARD D. LOVERING
PRIMARY EXAMINER
GROUP 1700